IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

J U D G M E N T

S.B. CIVIL FIRST APPEAL No.96/1988
BHARATPRAKASH AND COMPANY V/s MOHAN LAL & OTHERS

DATE OF JUDGMENT ::: NOV. 20, 2006

P R E S E N T

HON'BLE DR. JUSTICE VINEET KOTHARI

Shri Harsh Saini on behalf of
Shri A.K. Gupta for plaintiff appellant.
Shri Prafulla Goyal on behalf of
Shri S.C. Gupta for defendants respondents.

1. This appeal is directed against the judgment dated 22.7.1988 of the learned Additional District Judge, Baran, whereby he dismissed the Civil Suit No. 18/81 filed by M/s Bharatprakash & Company a partnership firm against the defendant firm, M/s Mittal Brothers, for recovery of a sum of Rs.15,352/- with interest claimed to be due on account of the sale of 25 bags of Posta under Invoice No.53 dated 3.12.1979 to the defendant.

2. The plaintiff in its plaint, claimed that

defendants No.1 to 5 were partners of the defendant No.6, firm – M/s Mittal Brothers and on 3.12.1979, the defendant firm purchased on credit basis 25 bags of Posta of 70 Kg. each, weighing total 17 Qntl. and 50 Kg. at the rate of Rs.725/- per quintal under its Invoice No.53 dated 3.12.1979 against which the defendant firm did not pay the price of the said goods to the extent of Rs.15,352/- which the plaintiff firm was entitled to recover with interest.

3. The defendants contested the said plaint and filed written statement denying the said transaction of credit purchase. On the basis of pleadings of the parties, the learned trial court framed the following issues :

1. Whether the plaintiff firm M/s Bharatprakash & Company was a registered partnership firm and Prakash Chand was its partner ?

2. Whether the defendants No. 1 to 5 are owners of the defendant No.6 M/s Mittal Brothers ?

3. Whether the defendants had purchased on 3.12.1979 from the plaintiff firm 17 Qntl. & 50 Kg. of Posta at the rate of Rs.725/- per quintal on credit basis ?

4. Whether the defendants had agreed to pay interest @ 1% per month ?

5. Whether the defendants are entitled to special damages of Rs.1,000/- only ?

6. Relief.

4. The Plaintiff produced in support of its plaint, PW -1 Prakash Chand (Partner), PW-2 Gull Mohammed (Dalal), PW-3 Bharat Prakash (Trader) and PW-4 Sri Kishan (Munim) and produced documents - invoice (Ex. 1), copies of accounts (Exs. 2 and 3) and return filed in Krishi Mandi Samiti (Ex. 4), register of firm (Ex. 5), list of partners (Ex. 6) and stock return (Ex. 7). The defendants produced four witnesses, namely; Ram Pratap (DW 1), Mohan Lal (DW 2), Hari Prasad (DW 3) and Kishan Lal (DW 4) - (Ex Munim of firm).

5. The learned trial court decided issue No.1 in favour of the plaintiff; whereas the issues

No.2, 3 and 4 were decided against the plaintiff. The issue No.5 regarding special damages claimed by defendants, was decided against the defendant. The additional issue No.7 was not pressed by the defendants. The issue No.6 regarding relief was decided against the plaintiff and thus the suit was dismissed.

6. The learned trial court while giving the finding on issues No.3 and 4, the main issues relating to the business transaction observed that it was essential to prove for the plaintiff that the purchaser, the defendant had signed on the invoice before such credit purchase by the defendant firm could be taken as proved. This assumption of the learned trial court does not appear to be sustainable in law. There is no legal requirement in trade that while making the sale or purchase, the sale invoice is required to be signed by the purchaser. It is the contract of sale and delivery of goods to the purchaser which is important to prove the transaction of sale or

purchase.

7. In the present case, the plaintiff had produced not only the invoice (Ex.1) which was proved by the partner PW 1 Prakash Chand but the delivery of goods to the defendant was also proved by PW 2 Gull Mohammed (Dalal). Books of accounts maintained in the regular course of business containing entry relating to this transaction were also produced by the plaintiff as Exbs. 2 and 3. It is also not in dispute that the defendant firm was dealing in the said commodity, i.e., Posta and had business relation with the plaintiff firm. PW 4 Sri Kishan (Munim) has also stated in his statement that the goods were weighed and loaded by Kishan Hamal. PW 3 Bharat Prakash, another trader had also deposed before the court that there was no prevalent custom in the trade at Chhipa Barod, the place of business of the plaintiff, to obtain signatures of the purchaser on the sale invoice. As against such over whelming evidence of the plaintiff, the mere bald denial of the defendant

firm denying the said transaction could not have been believed by the learned trial court. In view of this, the said findings of the learned trial court, are unsustainable and deserve to be set aside.

8. The findings on other issues by the learned trial court have to abide by the findings of issues No. 3 and 4 which deserve to be decided in favour of the plaintiff as in the opinion of this court, the plaintiff succeeded in proving the transaction of credit purchase in question by the defendant firm. The same is accordingly decided in favour of the plaintiff.

9. Consequently, this appeal is allowed and the judgment under appeal of learned trial court is set aside. The plaintiff is entitled to recover the said amount of Rs. 15,352/- from the defendant firm and / or from its partners with interest @ 12% p.a. The decree be made accordingly.

10. There is no order as to costs.

(Dr. Vineet Kothari),J.

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